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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF)
ARIZONA-AMERICAN WATER COMPANY,)
INC., AN ARIZONA CORPORATION, FOR)
APPROVALS ASSOCIATED WITH A)
PROPOSED TRANSACTION WITH MARICOPA)
COUNTY MUNICIPAL WATER)
CONSERVATION DISTRICT NUMBER ONE TO)
ALLOW THE CONSTRUCTION OF A SURFACE)
WATER TREATMENT FACILITY KNOWN AS)
THE WHITE TANKS PROJECT.)

DOCKET NO. W-01303A-05-0718

**MOTION TO STRIKE AND
ALTERNATIVE MOTION FOR
EXPEDITED DISCOVERY**

I. INTRODUCTION.

The Maricopa Municipal Water Conservation District No. 1 (“MWD” or “District”) respectfully requests that Arizona-American Water Company’s Surrebuttal Testimony – filed on March 12, 2007 – be stricken from the record. In the alternative, MWD requests that the discovery deadline be extended with respect to the Surrebuttal Testimony, and that Arizona-American be ordered to provide expedited responses to such discovery, and that MWD be allowed to provide Oral Rejoinder Testimony at the hearing in response to the Surrebuttal Testimony.

II. THE SURREBUTTAL TESTIMONY IS IMPROPER.

MWD filed Direct Testimony on January 24, 2007. Arizona-American filed Rebuttal Testimony on February 21, 2007. Arizona-American then filed Surrebuttal Testimony on March

1 12, 2007. Arizona-American's Surrebuttal Testimony does not respond directly to the Rebuttal
2 Testimony filed by any party. Instead, it merely contains additional attacks and arguments against
3 MWD's Direct Testimony. Essentially, Arizona-American attempts to rebut MWD's Direct
4 Testimony twice – with its second rebuttal nineteen days after its February 21, 2007 filing.
5 Arizona-American should not be allowed this second bite at the apple.

6 Further, Arizona-American's Surrebuttal Testimony does not contain any information or
7 arguments that could not have been made in its February 21 Rebuttal Testimony. Arizona-
8 American simply provides further responses to MWD's direct testimony. Arizona-American does
9 repeatedly refer to information obtained from data requests from MWD. But Arizona-American's
10 references are to MWD's responses to Arizona-American's First Set of Data Requests – that MWD
11 provided on January 19, 2007. Arizona-American had access to these responses for more than a
12 month (*i.e.* approximately 33 calendar days) before it filed its Rebuttal Testimony. Arizona-
13 American's behavior – providing Surrebuttal Testimony responding to issues it could have
14 included in rebuttal – should not be endorsed and its Surrebuttal Testimony should be struck from
15 the record.

16 Arizona-American's Surrebuttal Testimony also denies MWD the opportunity to file responsive
17 testimony. MWD is, at present, foreclosed from pursuing discovery regarding this testimony.
18 Therefore, for all of the reasons described above, Arizona-American's actions unduly prejudices
19 MWD.

20 Finally, Arizona-American's Surrebuttal Testimony violates the Commission's procedural
21 order issued December 27, 2006. That order directed that Surrebuttal Testimony be filed "on or
22 before **noon on March 12, 2007.**" (Procedural Order at 4:13-14, bold in original). Arizona-
23 American's Surrebuttal Testimony was date stamped at 3:42 pm. This violation is especially
24 troubling due to the content of Arizona-American's Surrebuttal Testimony and its prejudice to
25 MWD.

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1 **III. CONCLUSION**

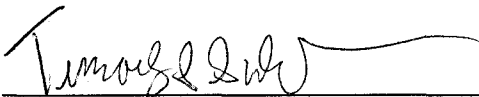
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3 Accordingly, Arizona-American's Surrebuttal Testimony should be stricken from the record
4 and not admitted into evidence. If this request is not granted, then the Commission should adopt
5 the following remedial measures:

- 6
7 1. MWD should be allowed to provide extended Oral Rejoinder Testimony from its
8 witnesses on the stand in response to Arizona-American's Surrebuttal Testimony.
9
10 2. The discovery deadline should be extended with respect to Arizona-American's
11 Surrebuttal Testimony only. Arizona-American should be directed to provide expedited
12 responses to such discovery.
13
14 3. Because of the short timeframe, Arizona-American should also be directed to make its
15 Surrebuttal witnesses (Mr. Gross and Mr. Broderick) available to MWD for expedited
16 depositions or interviews. Any remarks made, or documents provided, by those witness
17 as a result of this process should be admissible in the hearing in this matter.
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19 4. Although Arizona-American's Surrebuttal Testimony strongly prejudices MWD and
20 places MWD under severe time constraints, under no circumstances should the hearing
21 in this matter be delayed or continued.

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